

ORIGINAL

(S E R V E D)
(October 31, 2002)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

October 31, 2002

DOCKET NO. 02-11

**EMPIRE UNITED LINES CO., INC.-POSSIBLE VIOLATIONS
OF SECTIONS 10(a)(1) AND 10(b)(1) OF THE SHIPPING ACT OF 1984,
AND SECTION 10(b)(2)(A) OF THE SHIPPING ACT OF 1984
AS AMENDED BY THE OCEAN SHIPPING REFORM ACT OF 1998,
AS WELL AS THE COMMISSION'S REGULATIONS
AT 46 C.F.R. 515.31(e) AS AMENDED**

APPROVAL OF SETTLEMENT

Complainant Bureau of Enforcement (BOE) and respondent Empire Lines Co., Inc. (Empire) have reached agreement to settle this proceeding and have jointly requested that I approve their agreement and dismiss this proceeding. The request is well explained, supported by legal authority and fully meets the criteria for approval of settlement agreements in Commission proceedings. Accordingly, as explained below, the settlement agreement is approved pursuant to 46 C.F.R. § 502.603(a) and the proceeding is discontinued with prejudice subject to Commission review pursuant to 46 C.F.R. § 502.227(c).

Procedural History

On August 1, 2002, the Commission issued an Order of Investigation to determine whether Empire, a licensed ocean transportation intermediary (OTI) operating as a non-vessel-operating common carrier (NVOCC): (1) violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. sec. 1709(a)(1), by receiving unlawful rebates through its collection of unwarranted freight forwarder compensation from other OTI's; (2) whether Empire violated section 10(b)(1) of the 1984 Act and section 10(b)(2)(A) of the 1984 Act as amended, 46 U.S.C. app. §§ 1709(b)(1) and 1709(b)(2)(A), by charging an amount of compensation for the transportation of property which differed from the rates and charges set forth in its published tariff; (3) whether Empire violated Commission regulation 46 C.F.R. § 5 15.3 1 (e), as amended, by knowingly and willfully providing false information to several ocean common carriers in connection with Empire's shipments; (4) whether civil penalties should be assessed against Empire and, if so, the amount to be assessed, in the event any of the aforementioned violations were found; (5) whether Empire's tariff should be suspended, in the event that violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found; (6) whether Empire's OTI license should be suspended or revoked pursuant to section 19 of the 1984 Act; and (7) whether a cease and desist order should be issued, in the event violations are found.

Reasonableness of the Settlement Agreement

BOE contends that the evidence would show that respondent violated the 1984 Act by knowingly and willfully providing false information on numerous shipments from April 2, 1997 through October 5, 1999 by listing a freight forwarder on numerous bills of lading for respondent's shipments thereby allowing the freight forwarder to collect unwarranted compensation from several ocean common carriers. BOE further contends that on at least twenty-one occasions

between April 18, 1997 and December 15, 1998, Empire collected a portion of the unwarranted compensation from the freight forwarder through invoices for various alleged services and products resulting in respondent knowingly and willfully obtaining ocean transportation for its cargo at less than the rates and charges that would otherwise be applicable. Finally, BOE contends that Empire, acting as an NVOCC, assessed and collected rates for shipments transported between November 14, 1997 and July 1, 2002 which varied from those set forth in its published tariff.

Under the terms of the settlement agreement, Empire does not admit to any violation of the 1984 Act or Commission regulations. BOE believes that Empire has terminated the practices which led to this proceeding and has instituted measures to prevent the reoccurrence of such practices in the future. Moreover, respondent has cooperated with BOE in carrying out its investigative and enforcement activities, and agrees to make a monetary payment to the Commission in the amount of \$40,000.00. As required at 46 C.F.R. § 502.603(a), the following is a recitation of the conditions of the settlement agreement:

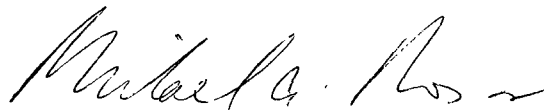
1. Within five (5) days after a decision of the Administrative Law Judge or the Commission approving this Agreement becomes administratively final, Respondent shall make monetary payment to the Commission, by cashiers or certified check, in the total amount of \$40,000 (Forty Thousand Dollars).
2. Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, this instrument shall forever bar the commencement or institution by the Commission of any civil penalty assessment proceeding or other claim for recovery of civil penalties against Respondent for the alleged violations of the Shipping Act of 1984 set forth in FMC Docket No. 02-1 1.

3. This Agreement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

The Commission, like the courts, strongly encourages settlements and, absent any showing that they contravene any law or public policy, presumes that they are just and reasonable, although not acting as a mere rubber stamp. See, e.g., *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505, 512-515 (1978); *Great White Fleet v. Southeastern Paper Products, Inc.*, 26 S.R.R. 1487, 1488-1490 (1994).

The Commission's rules of procedure have long provided for settlements and are consistent with the importance given by the Administrative Procedure Act in the facilitation of settlements. See, e.g., 46 C.F.R. 502.91(a); 502.94(a)(1); 5 U.S.C. § 554(c)(1). I find nothing in the settlement agreement that would contravene any law or public policy. The proposed agreement considers the merits of each side's case and provides a candid assessment of the costs and uncertainties of litigation. The agreement would also foster the dissemination of additional information which may assist the Commission in its investigative and enforcement activities. Moreover, a monetary payment of \$40,000.00 by Empire, who maintained an NVOCC bond in the amount of \$50,000.00 at the pertinent times herein, is likely to deter future violations of the aforementioned sections of the 1984 Act by other shippers.

Based on the foregoing, the settlement agreement is approved pursuant to 46 C.F.R. § 502.603(a) and the proceeding is discontinued with prejudice subject to the review of this ruling by the Commission pursuant to 46 C.F.R. 502.227(c).



Michael A. Rosas
Administrative Law Judge